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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,057	04/25/2005	Huan nan Ma	E1734-00007	2070
23900	7590	01/04/2010	EXAMINER	
J C PATENTS 4 VENTURE, SUITE 250 IRVINE, CA 92618				KAO, WEI PO ERIC
ART UNIT		PAPER NUMBER		
		2464		
NOTIFICATION DATE		DELIVERY MODE		
01/04/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcpatents@sbcglobal.net  
jcpi@msn.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/522,057	MA ET AL.
	<b>Examiner</b> WEI-PO KAO	<b>Art Unit</b> 2464

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 05 November 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendments***

1. The examiner has acknowledged the amendment made to the claims.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.
3. Applicant's arguments filed on 09/02/2009 have been fully considered but they are not persuasive.

In response to the remark on pages 4 and 5:

In response to the entire content of the remarks, in particular that "... Shiragaki clearly fails to teaching breaking the communication passage between layer A and layer B after detecting the failure ... Clearly, the passage between layer A and B is not broken," the examiner respectfully disagrees. Given the presented claims, specifically claim 1, the "low layer transmission passage" between the low and high layers is believed to be a passage to carry traffic or service. When it is

broken as presented in the claim, it is believed that it does not necessarily mean the communication or signaling between low and high layer is seized. In fact, breaking of the transmission passage may only mean the traffic or service carried by the transmission passage no longer flows to high layer. In another word, the examiner believes that breaking of the transmission passage does not seize the communication or signaling between low and high layer; breaking of the transmission passage may merely mean the traffic or service carried by the transmission passage no longer flows to high layer, at least based on the given claim limitations. Since, Shiragaki teaches exactly the above interpretation, namely, after layer B detecting layer A encountering trouble by receiving notice 203 (signaling) and obtain the right to switching the main signal (a transmission passage carrying traffic or service) after receiving notice 208 (signaling), the main signal (a transmission passage carrying traffic or service) no longer flows to layer A and thus bypass the layer A encountering trouble. Therefore, the examiner respectfully asserts that Siragaki does teach the particular limitation.

***RCE***

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/05/2009 has been entered.

***Claim Rejection - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Claims 1-6 are directed to a non-statutory subject matter because the claimed term, a “processing module,” may merely be computer software product, which is not a process, machine, manufacturer, or composition of matter, or any new and useful improvement thereof.

***Claim Rejection - 35 USC § 103***

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3, 4, 5 and 6 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Shiragaki, U.S. Publication No. 2002/0162045 in view of Pierson, Jr., U.S. Patent No. 6633566 (hereinafter Pierson).

Regarding Claim 1, Shiragaki discloses that **a method for protecting high layer service in the multi-layer communication equipment, comprising the following process** (see Abstract): **First, low layer processing module provides high processing module with low layer transmission passage** (see Figures 1 and 2, [0004-0006] [0164] [0175] i.e. such multi-layer communication setup is commonly known as IP over SONET/SDH, according to OSI model, SONET/SDH is at physical layer, which provide physical connection between network nodes, IP is at the network layer, which provides routing or logical connection; another common multi-layer setup is ATM over SONET/SDH); **Third, after high layer processing module detecting the said module encountering the trouble, it will inform low layer processing module** (see Figure 1 Elements 103 and 104, Figure 3 Elements 203/208, [0025] [0030-0033] [0176-0177] [0180] [0182]); **Fourth, after low layer processing module detecting high layer processing module encountering the trouble, the low layer transmission passage between the low layer processing module and the high layer processing module is broken, and the low layer processing module connects the broken passage to set up a bypass, so as to isolate the high**

**layer processing module encountering the trouble** (see Figures 3 and 4, [0180] [0182] [0185-0188] i.e. according to [0186], layer A remains in the failed state since it is not yet able to recover the failure; according to [0187], layer B is able to finish up the failure recovery and carry out the main signal after receiving the switch authorization notice; in summary a bypass is set up after layer B detects layer A encountering a failure after receiving notice 203 and 208 to carry out the main signal while layer A remains in a failed state). However, Shiragaki does not teach that **Second, high layer processing module of the multi-layer communication equipment extract and insert high layer service of the multi-layer communication equipment from low layer transmission passage, avoiding changing the service between upstream node and downstream node after passing high layer processing module of the multi-layer communication equipment.** Pierson from the same field of endeavor teach that **Second, high layer processing module of the multi-layer communication equipment extract and insert high layer service of the multi-layer communication equipment from low layer transmission passage** (see Abstract, Figures 1 and 5, Column 2 Lines 30-39, Column 3 Lines 44-67, Column 4 Lines 1-40, Column 7 Lines 6-49, Columns 9 and 10 e.g. column 10 lines 14-26; to extract ATM service from the SONET transmission passage, the ATM receiver receives the data cell unloaded from a SONET frame; to insert ATM service to the SONET transmission passage, the ATM transmitter sends the data cell to the SONET transmitter to be loaded to the SONET frame), **avoiding changing the service between upstream node and downstream node after passing high layer processing module of the multi-layer communication equipment** (see Figure 5 Steps 511 and 523, Column 9 Lines 38-40, Column 10 Lines 34-36 i.e. data being compressed and restored suggests that the data remains unchanged or in another word

the service carried by the data remains unchanged). At the time of the invention, it would have been obvious to a person ordinary skill in the art to implement the functionalities of the ATM transmitter/receiver and the SONET transmitter/receiver as well as the data processing mechanism from Pierson's teaching to Shiragaki's inventive A layer and B layer respectively. The motivation would have been that the available bandwidth of the network is efficiently utilized especially in the case of a TDM transferring scheme (see column 3 lines 15-41).

Regarding Claim 3, Shiragaki further discloses that **a method for protecting high layer service in a multi-layer communication equipment, wherein in the third step, when high layer processing module detects the said module encountering trouble, it will inform low layer processing module by soft messages or hardware signals** (see [0232]).

Regarding Claim 4, Shiragaki further discloses that **a method for protecting high layer service in a multi-layer communication equipment, wherein in the fourth step, said situation that low layer processing module detect high layer processing module encountering trouble further comprising: low layer processing module judges whether the service signal transmitting by high layer processing module is invalid or not, or low layer processing module detects the hardware signals or soft messages sending by high layer processing module indicating its invalidation** (see Figure 3 Element 208, [0186] i.e. once layer B receives the notice 208, it knows that the layer A is not yet recovered from the failure; in another word, layer B detects the messages sending by layer A indicating its invalidation).

Regarding Claim 5, Shiragaki further discloses that **a method for protecting high layer service in the multi-layer communication equipment, wherein said bypass connection is actual connection of the physical lines, or it is logical connection within low layer processing module** (see [0004-0007] i.e. according to OSI model, SONET/SDH is at physical layer).

Regarding Claim 6, Shiragaki further discloses that **wherein said bypass connection is actual connection of the physical lines, or it is a logical connection with the low layer processing module** (see Figure 1 i.e. the main signal is known to be at least a logical connection).

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shiragaki, U.S. Publication No. 2002/0162045 and Pierson, Jr., U.S. Patent No. 6633566 (hereinafter Pierson) as applied to claim 1 above, and further in view of Conoscenti et al, U.S. Patent No. 5627836 (hereinafter Conoscenti).

Regarding Claim 2, Shiragaki and Pierson teach that **a method for protecting high layer service in the multi-layer communication equipment, wherein in the second step, a connection is set up for the service passing the high layer processing module of the said node, namely for ATM traffic, a cross connection** (see Pierson, Figure 6, Column 10 Lines 52-67, Column 11 Lines 1-55 i.e. since ATM is known for its connection oriented characteristic, figure 6 provides a suggestion that an ATM connection is set up between a source/master and a

destination/slave in order to carry the ATM traffic). However, Shiragaki and Pierson do not specifically teach that **a transparent virtual path connection is set up for the service passing the high layer processing module of the said node, namely for ATM traffic, a cross connection, which changes neither virtual path identification nor virtual channel identification, will be set up, to avoid changing the service between upstream node and downstream node after passing high layer processing module of the said node.** Conoscenti from the same field of endeavor teaches that **a transparent virtual path connection is set up for the service passing the high layer processing module of the said node, namely for ATM traffic, a cross connection** (see Abstract, Figure 1, Column 1 Lines 39-67, Column 2 Lines 1-7, Column 6 Lines 29-67, Column 7 Lines 1-14 i.e. a virtual path connection is defined by the VPI), **which changes neither virtual path identification nor virtual channel identification, will be set up, to avoid changing the service between upstream node and downstream node after passing high layer processing module of the said node** (see Column 2 Lines 50-67, Column 3, Column 4 Lines 46-62 e.g. column 4 lines 46-62 e.g. accordingly, the VPI/VCI values remain constant throughout the network). At the time of the invention, it would have been obvious to a person ordinary skill in the art to implement the VPI/VCI administration mechanism to Shiragaki and Pierson's combined teaching. The motivation would have been that the VPI/VCI values can be utilized to administrate the network and perform maintenance related functions (see column 3 lines 3-6).

### ***Conclusion***

11. Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WEI-PO KAO whose telephone number is (571)270-3128. The examiner can normally be reached on Monday through Friday, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ricky Ngo/

Supervisory Patent Examiner, Art Unit  
2464

/Wei-po Kao/

Examiner, Art Unit 2464